



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 19TH DAY OF MARCH 2026 / 28TH PHALGUNA, 1947

OP(C) NO. 853 OF 2016

AGAINST THE ORDER DATED 15/2/2016 IN I.A.NO.1033/2010 IN
O.S.NO.166 OF 1998 OF MUNSIFF COURT, THALIPARAMBA, KANNUR
DISTRICT

PETITIONER/PETITIONER:

PUTHUPARAMBIL RAJU
AGED 60 YEARS, S/O. VASU, KARTHIKAPURAM, ALAKKODE
AMSOM, ARANGOM DESOM, KANNUR DISTRICT

BY ADVS.
SHRI.SUNIL NAIR PALAKKAT
SHRI.K.N.ABHILASH
SHRI.M.A.AHAMMAD SAHEER

RESPONDENT/RESPONDENT:

KACHIRAYIL JOSEPH
S/O. ANTHRAYOS, AGED ABOUT 36 YEARS, KARTHIKAPURAM,
KANNUR DISTRICT 670 572

BY ADVS.
SRI.V.T.MADHAVANUNNI
SRI.V.A.SATHEESH

THIS OP (CIVIL) HAVING COME UP FOR HEARING ON 06.03.2026,
THE COURT ON 19.03.2026 DELIVERED THE FOLLOWING:



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P. KRISHNA KUMAR, J.

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O.P.(C)No.853 OF 2016

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Dated this the 19th day of March, 2026JUDGMENT

The petitioner is the defendant in a suit for specific performance of an agreement for sale of immovable property. The suit was decreed on 21.11.2001, directing the petitioner to execute the sale deed upon the respondent/plaintiff depositing the balance sale consideration of ₹10,000/- within one month. The respondent, however, failed to deposit the amount within the stipulated period. He deposited the amount belatedly, and got the sale deed executed through the court.

2. Alleging non-compliance with the time stipulation in the decree, and contending that no extension of time had been granted by the Court, the petitioner filed Ext.P4 application seeking rescission of the contract. By the order



impugned in this petition, the learned Sub Judge dismissed the application on the ground that it was barred by limitation.

3. Heard Sri. Sunil Nair (Palakkad), learned counsel for the petitioner, and Sri. V.T. Madhavanunni, learned counsel for the respondent.

4. The learned counsel for the petitioner contended that no notice was served on the petitioner in the application filed by the respondent for execution of the sale deed, and therefore, the delay in filing the application for rescission cannot be attributed to the petitioner. Placing reliance on the decisions in *V Alias v. Abraham* (AIR 2004 Ker. 344), *Rajinder Kumar v. Kuldeep Singh* (AIR 2014 SC 1155), and *Prem Aggarwal v. Mohan Singh* (2025 KHC OnLine 6860), it was argued that, applying the doctrine of *actus curiae neminem gravabit*, the court ought not to have dismissed the application on the ground of limitation, in the peculiar facts of the case.



5. The learned counsel further placed heavy reliance on the judgment of the Hon'ble Supreme Court in ***Prem Jeevan v. K.S. Venkata Raman*** (AIR 2017 SC 623), to contend that the time stipulated in the decree does not stand automatically extended merely because the defendant had not sought rescission of the contract, and thus the decree is not executable.

6. The learned counsel for the respondent, on the other hand, submitted that notice was duly served on the petitioner on I.A. No.2339/2002, which was filed by the respondent seeking execution and registration of the sale deed, and that the petitioner had entered appearance therein. It was contended that the belated application for rescission lacks bona fides. Reliance was placed on ***Ishwar (Since Deceased) Thr. LRs v. Bhim Singh*** (AIR 2024 SC 4232) to contend that when the court accepts the balance sale consideration and permits execution of the sale deed, extension of time is implicit in such orders.

7. As regards the first contention, the records disclose



that the Munsiff Court had issued notice in I.A. No.2339/2002 to the petitioner-defendant on 11.11.2002, and that the petitioner had entered appearance on 16.12.2002. In such circumstances, the plea founded on the doctrine of *actus curiae neminem gravabit* is factually untenable.

8. It is also pertinent to note that the decree was passed on 21.11.2001, whereas the application for rescission was filed only on 22.03.2010. In a suit for specific performance, the court does not become *functus officio* upon passing the decree; rather, such a decree partakes the character of a preliminary decree, and the proceedings are deemed to remain pending. Both parties are entitled to invoke the jurisdiction of the court under Section 28 of the Specific Relief Act, 1963 for rescission of the contract upon the occurrence of contingencies contemplated therein. Therefore, the petitioner was not required to await notice in any application filed by the respondent and could have independently sought rescission. Under Article 137 of the Limitation Act, 1963, the limitation period for an application for which no period of limitation is provided



elsewhere is three years from the date when the right to apply accrues. The right to seek for rescission accrues upon the expiry of the time stipulated in the decree for deposit of the balance consideration, and not upon receipt of notice in the subsequent proceedings. In ***B.V. Gururaj v. M.R. Rathindran*** (AIR 2010 Mad 129), it was held that the cause of action for rescission arises from the date of decree for specific performance and the limitation for such an application is 3 years. Nevertheless, as the decree in this case stipulates a specific period for deposit, the limitation period shall commence only from the expiry of the time so prescribed therein.

9. In the present case, the respondent failed to deposit the amount within the time stipulated in the decree. He made the deposit within one year and simultaneously filed an application seeking execution and registration of the sale deed through court. The court, after issuing notice to the petitioner, allowed the application and the sale deed was executed through its process. The petitioner, sought rescission only upon the respondent initiating execution



proceedings for delivery of possession, by which time nearly eight years had elapsed. The application is, therefore, hopelessly barred by limitation. The application seeking rescission, was rightly dismissed by the court.

10. It is also to be noted that even on the merits, the contention of the petitioner relying on *Prem Jeevan v. K.S. Venkata Raman and Another* (supra), that the court having not explicitly extended the time, the decree is not executable, is not sustainable. In *Prem Jeevan*, the question that arose for consideration was whether the failure of the judgment-debtor to seek rescission of the contract would amount to an automatic extension of the time fixed in the decree. In that case, the plaintiff applied for execution of the decree by depositing the amount after the time stipulated by the court. The judgment-debtor objected to the execution, contending that the balance amount had not been deposited within the prescribed period and, therefore, the decree had become inexecutable in the absence of an order extending time. The Execution Court upheld the objection and held that the execution petition was not maintainable in the absence



of such extension. The said decision was reversed by the High Court and was ultimately carried to the Apex Court. The Court held as follows:

“9. Reference to Order XX R.12A CPC shows that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the present case, the said period was two months from the date of the decree.

10. In absence of the said time being extended, the decree - holder could execute the decree only by making the payment of the decretal amount to the judgment - debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree - holders, relying on judgment of this Court in *Ramankutty Guptan v. Avara*, 1994 (2) SCC 642 : AIR 1994 SC 1699, in an appropriate case the Court which passed the decree could extend the time as envisaged in the *Specific Relief, 1963*. In the present case no such steps have been taken by the decree - holders.

11. In above circumstances, the contention, advanced on behalf of the decree - holders, respondents herein, that unless the judgment - debtor seeks rescission of the contract in terms of S.28 of the *Specific Relief Act*, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree - holders to pay interest, cannot be accepted.”

(Emphasis added)

11. The factual matrix herein is materially



different. Though the respondent failed to deposit the amount within the stipulated time, at the time of making such deposit, he filed an application seeking execution of the sale deed through the court. The court issued notice to the present petitioner-defendant and, thereafter, allowed the said application on merit. Even though the court did not explicitly extend the time fixed in the decree, it is implicit in the said order.

12. In this context, the law declared by the Apex Court in *Ishwar (Since Deceased) Thr. LRs and Others v. Bhim Singh and Another* (supra) assumes relevance. In the said case, a decree for specific performance was granted on 12.01.2012 with a direction to pay the balance sale consideration within two months. Though the decree-holder filed an execution application on 20.03.2012, since the judgment was challenged in appeal, a further application was filed before the Execution Court only on 24.03.2014, after disposal of the appeal, seeking permission to deposit the balance sale consideration. The judgment-debtor, on the other hand, filed an application for rescission of the contract in the same



proceedings on the ground that the deposit was not made within the stipulated time. The Execution Court rejected the said application and permitted the decree-holder to deposit the balance sale consideration. Before the Apex Court, it was contended by the judgment-debtor that the Execution Court had no jurisdiction to extend the time for depositing the balance sale consideration. It was further contended that, in the absence of a specific application for extension of time, the court could not have granted an extension. In the above circumstances, the Apex Court held that the Execution Court also has the power to extend time under Section 28 of the Act. Significantly, the Court further held as follows:

“29. The contention of the learned counsel for the appellant(s) that there was no proper prayer for condonation of delay in making the deposit of the balance consideration, or that there was no proper application for extension of time to make deposit, is unworthy of acceptance. Because, in the execution petition itself, which was promptly filed after expiry of 60 days from the date of the appellate court decree, the decree-holder had sought permission to make deposit. Not only that, the application filed after dismissal of the second appeal also sought permission to make deposit. **The prayer to extend the time to make deposit was, therefore, implicit in the prayer to permit the decree-holder to make deposit of the**



balance consideration. In this view of the matter, we reject the submission of the appellants that, as there was no proper application for extension of time to make deposit, the Court had no jurisdiction to extend the same.”

(Emphasis added)

In *K. Kalpana Saraswathi v. P. S. S. Somasundaram Chettiar* (AIR 1980 SC 512), the Supreme Court held that even at the appellate stage, the time for making the deposit can be extended so as to enable the plaintiff to avail the benefit of the agreement for sale in his favour. As held in *Ishwar* (supra), this power can be exercised even by the Execution Court. Such power may, in appropriate cases, be exercised *ex post facto* as well after receiving the amount that ought to have been deposited earlier. Viewed in this backdrop, when the court ordered execution of the sale deed on the application filed by the respondent after receipt of the balance sale consideration and with notice to the petitioner, it amounts to implicitly extending the time fixed in the decree under Section 28(1) of the Act. It is true that extension of time is not automatic and that while doing so, the court must consider the circumstances under



which the plaintiff failed to deposit the amount within the stipulated period. However, once the court has acted upon the request of the plaintiff on merit and has even executed the sale deed, it cannot be contended that the absence of an express order extending time renders the decree inexecutable.

13. Hence, the impugned order is liable to be upheld, rejecting the contentions raised by the petitioner.

As a result, the original petition is dismissed.

Sd/-

P. KRISHNA KUMAR

JUDGE

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APPENDIX OF OP(C) NO. 853 OF 2016

PETITIONER EXHIBITS

- P1 THE TRUE COPY OF THE NOTICE DATED 19-08-2008 IN IA NO 2339/2002 IN O.SNO 166/98 OF THE MUNSIFF COURT THALIPARAMBA
- P2 THE TRUE COPY OF THE COUNTER DATED 15-09-2008 IN I.A NO 2339/2002 IN O.S NO 166/98 OF THE MUNSIFF COURT THALIPRAMBA, FILED BY THE PETITIONER
- P3 THE TRUE COPY OF THE E.P NO 171/2009 DATED 25-09-2009 IN I.A NO 2339/2002 IN OS NO 166/98 OF THE MUNSIFF COURT THALIPARAMBA
- P4 THE TRUE COPY OF THE APPLICATIOND ATED 22-03-2010 IN OS NO 166/98 OF MUNSIFF COURT TALIPARAMBA
- P5 THE TRUE COPY OF THE JUDGMENT DATED 21-11-2001 IN O.S NO 166/98 OF THE MUNSIFF COURT TALIPARAMBA
- P6 THE TRUE COPY OF THE JUDGMENT DATED 763/2016 DATED 11-03-2016 OF THIS HON'BLE COURT
- P7 THE TRUE COPY OF THE ORDER DATED 15-02-2016 IN I.A NO 1033/2010 IN O.S NO 166/1998 OF THE MUNSIFF'S COURT TALIPARAMBA